Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	
	)	

REPLY COMMENTS OF THE NATIONAL EDUCATION ASSOCIATION, THE INTERNATIONAL SOCIETY FOR TECHNOLOGY IN EDUCATION, AND THE CONSORTIUM FOR SCHOOL NETWORKING

The National Education Association (NEA), the International Society for Technology in Education (ISTE), and the Consortium for School Networking (COSN), through undersigned counsel, hereby submit this reply to the comments filed in response to the Notice of Proposed Rulemaking and Order (the Notice) in the above-captioned proceeding.[1]

INTRODUCTION

As set forth in our initial filing, NEA, ISTE, and COSN support a number of the rule changes proposed in the Notice, including:

- Expanding E-Rate supported eligible services to include voice mail and wireless services used by school bus drivers, non-teaching school staff, and security personnel;
- Codifying the 30% rule;
- Obligating service providers to offer applicants a choice of reimbursement methods and to remit reimbursements within 20 days;
- Implementing reasonable limits on equipment transferability;
- Modifying the program's appeal rules by extending the appeals filing deadline from 30 days to 60 days and allowing the postmarked date of appeals to serve as the date of filing;
- Extending the benefits of excess E-Rate services and equipment to all community members without increasing program costs; and

[1] *Notice of Proposed Rulemaking and Order*, (FCC 02-6), released January 25, 2002 (hereinafter, "Notice").

- Definitively clarifying that unused program funds from funding years should be carried forward to and used in succeeding program years.

Although we support the majority of the Commissions proposals, we continue to oppose any proposal that would, in our view, destabilize or compromise the integrity of the program. Therefore, we cannot support two of the Commission's proposals in the Notice:

- Permitting eligible applicants to receive discounts for Internet access when bundled with content; and

- Requiring applicants to certify compliance with the Individuals with Disabilities and Education Act (IDEA), the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990 (ADA) as a condition of receiving funding.

At this time, NEA, ISTE, and COSN wish to address five additional issues raised by the public comments filed in this proceeding. First, we would like to emphasize the nearly universal opinion that steps should be taken to increase the availability of internal connections funding to those applicants in lower discount brackets. Respondents to the Notice submitted a variety of proposals, including: adjusting the discount matrix for Priority 2 services, implementing state caps, utilizing per student/per patron caps, allocating funds based on services, and revising the funding priority system. For the reasons set forth below, NEA, ISTE, and COSN support a one-year trial reduction of the discount matrix for Priority 2 services.

Second, NEA, ISTE, and COSN also support expanding E-Rate coverage for all ancillary telephone services, including voice mail, E911, and directory assistance. Based on the information contained in the comments, E-Rate coverage for these ancillary services would constitute an administrative savings that would outweigh any associated cost to the program.

Third, with some limitations, NEA, ISTE, and COSN also endorse the proposal to allow the program Administrator to assign BEAR reimbursements directly to applicants, eliminating the need for a twenty (20) day rule. Although we believe that the providers must continue to submit the BEAR form in order to prevent fraud and abuse, the addition of an assignment block to the BEAR form that would enable the Administrator to assign payments directly to the applicants would eliminate the service providers' roles in the long delay often associated with BEAR reimbursements.

Fourth, NEA, ISTE, and COSN oppose any efforts to eliminate the Form 470 and the competitive bidding requirement. Based on the public comments, it is apparent that many applicants still do not understand the Form 470 process, and may be unaware of the streamlined nature of the online Form 470. Alternatively, we suggest that the program's administrator, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) renew its outreach and education efforts to improve applicants' understanding of the Form 470 and the competitive bidding process.

Finally, NEA, ISTE, and COSN reiterate their objections to proposals that would divert limited program funds to ineligible services. Specifically, we oppose suggestions proffered by some respondents to the Notice that the SLD reimburse state education agencies or library systems for the annual expenses associated with the training and implementation of the E-Rate program. NEA, ISTE, and COSN oppose these proposals because payment of such sums would remove funds from an oversubscribed program and establish a precedent for any institution to seek program funds to recoup E-Rate administrative costs.

DISCUSSION

I. PROPOSALS TO INCREASE THE AVAILABILITY OF INTERNAL CONNECTIONS DISCOUNTS TO APPLICANTS WITH LOWER DISCOUNT RATES

For the past three program years, individual applications for funding have exceeded 35,000, overall funding requests have been nearly the double the annual cap, and internal connections funding has been unavailable to applicants with less than 86% eligible discount rates. With this incredible demand likely to continue to outpace available funding for many years to come, now more than ever, there is a need to consider a variety of proposals to increase the availability of internal connections discounts to applicants with lower discount rates. NEA, ISTE, and COSN believe that the best solution, and perhaps the most obvious, is to raise the $2.25 billion spending cap, and increase the money available to all those who desperately need it.

Alternatively, five other proposals have been suggested in an attempt to funnel some portion of the internal connections money to those in the lower discount ranges: adjusting the discount matrix for Priority 2 services, implementing state caps, utilizing per student/per patron caps, allocating funds based on services, and revising the funding priorities.

A. Adjusting the Discount Matrix

We believe that the most promising and least administratively burdensome proposal, put forth by the Council of Chief State School Officers (CCSSO), the Benton Foundation, the Missouri State Network (MORENet), Funds for Learning, the Iowa Department of Education, and the Pennsylvania Department of Education, is the recommendation to revise the discount matrix. In its response to the Notice, CCSSO proposed reducing the discount rate for Priority 2 services and equipment by 20%-40%. Under this scenario, 90% discount applicants would receive 90% discounts for all Priority 1 services, but would receive between a 70% and 50% discount for Priority 2 services and equipment. Other proposals from MORENet and Iowa suggested a flat discount rate of 50% for all Priority 2 services.

Although we believe that there is merit to the concept of adjusting the matrix as a way to ensure that those applicants eligible for lower discount rates gain access to internal connections funding, we are cognizant that no data exists currently to demonstrate definitively that such an adjustment would accomplish this goal. Therefore, NEA, ISTE, and COSN advise proceeding with caution down this path and support a limited, one-year trial adjustment of the discount matrix. During this trial period, we recommend that the discount rates for all applicants at the 86% discount band and above should be reduced by 20% for Priority 2 services and equipment; their Priority 1 discount rates should remain unaffected.

While some may argue that this proposal is unfair to the very low-income schools and libraries that comprise the group of applicants that would receive a lower internal connections discount rate if this proposal were to be implemented, we note that every single applicant that would be impacted has been eligible for full internal connections discounts in the program's first five years. During this same period, those applicants occupying discount bands only slightly lower have had significantly fewer opportunities to receive internal connections funding. Moreover, this matrix adjustment proposal does not completely bar for a period of time those applicants with 86% or greater discount rates from seeking internal connections funding, as do other proposals advanced in responses to the Notice; rather, it simply requires them to pay a greater share of these services. Finally, this proposal is couched in extremely limited terms: it recommends only a 20% adjustment rather than a 40% adjustment, as others have proposed; and it does not advocate for a permanent change to the matrix, only a one-year trial. We are confident that implementation of this one-year trial should provide a sufficient basis for assessing the benefit of this change and determining whether the revised discount matrix should be implemented on a more permanent basis.

B. Implementing State Caps

The state education agencies for Florida and Illinois and the Florida Public Service Commission propose in their responses to the Notice a state cap system. Under such a system, SLD would apply a poverty formula to the $2.25 billion cap to determine each state's share of the total and would distribute program funds to applicants on a state-by-state basis, up to each individual state's cap. The same funding priorities would continue to apply and funds unused by a particular state's applicants would be returned to the general fund.

NEA, ISTE, and COSN recognize that this proposal would likely allow more applicants below 86% to obtain internal connections funding and spread E-Rate funds more evenly across the country. In our opinion, though, the cost to the program overall of implementing this proposal would be substantial, thus we must oppose it. First, we are concerned that this proposal would greatly undermine the core concept of this program: serving the entire country's neediest schools and libraries. As we see it, this proposal subverts the goals of the program by attempting to convert a national, applicant-driven program into a state-oriented program that is focused on each state receiving its perceived "fair share" of funding. If the Commission were to adopt this proposal, it is not difficult to imagine applicants from small or medium-sized states who are eligible for 20% or 30% discounts receiving internal connections funding while 89% applicants from larger states receive nothing because their states have already reached their state caps. Second, this proposal starts the program along the dangerous road of becoming a block grant operated by states. Once the program funds are divided-up and distributed to applicants based on state caps, the next logical step would be to simply provide states their share directly in the form of a block grant and to allow them to disburse E-Rate funds themselves. If such a scenario were to come to pass, there would be a great risk that the program's focus on telecommunications, Internet access and internal connections would be lessened or abandoned as states opted to use E-Rate funds to address other needs. Finally, implementation of this proposal – at least in the first year – would be enormously complicated and burdensome for SLD, leading to higher administrative costs and lengthy commitment letter delays.

C. Per Student/Per Patron Caps

In its response to the Notice, Funds for Learning proposes another possible method of distributing E-Rate funds: a per student/per patron cap. Under this system, the Commission would impose a cap on the total funds an applicant would receive in a given year, calculated by a per student or per patron rate. In exchange, each applicant would be given the flexibility to use E-Rate funds as it sees fit, regardless of classification.

NEA, ISTE, and COSN view this proposal in much the same way as we view the state cap proposal, except that this appears to be a block grant to applicants rather than to states. We must oppose it on a number of grounds. First, it overturns the current priority system, thereby eviscerating the Commission's attempts to direct funding to telecommunications and Internet access services, which the Commission have deemed to be services of paramount importance. Second, it provides no guarantee that the lowest income schools in a district would receive the true benefit of their discount rates, another bedrock principle of this program. For those who argue that districts may be relied upon to ensure that their low-income schools benefit appropriately from the E-Rate, we note that the Notice contains proposals on limiting equipment transferability precisely because districts allegedly used their 90% eligible schools as straw purchasers for their lower discount eligible schools. Finally, this proposal makes it difficult, if not impossible for the Commission to monitor and prevent misuse or abuse of program funds because it would allow applicants to use E-Rate funds at their discretion. From our vantage point, this seems to directly contravene the Commission's stated intention in the Notice to make changes to the program that prevent waste, fraud, and abuse.

D. Allocating Funding Based on Service Type

Funds for Learning also suggests in its response to the Notice that the Commission allocate the available dollars among different categories of services, *i.e.*, provide a certain percentage of the program's overall funds for telecommunications services, a certain percentage for Internet access, and a certain percentage for internal connections requests at each discount band. If any dollars remained after commitments were filled, Funds for Learning recommends that they be applied to unfunded requests based on the current priority system.

NEA, ISTE, and COSN are inclined to oppose this proposal. We are well aware of the theory that as more schools and libraries are connected, the amount of E-Rate funding necessary for Priority 1 services will continue to grow and the amount available for Priority 2 services will continue to shrink. While the idea of reserving a particular sum for internal connections discounts is attractive because it would ensure that a certain number of applicants will receive internal connections discounts each year, we are mindful that any such reservation would necessarily lead to a corresponding decrease in funds available for Priority 1 services. We do not think that it makes sense to fund internal connections for schools and libraries but cut-off funding for the services, such as access to the Internet, that make such connections valuable in the first place. Moreover, under the Funds for Learning proposal, applicants would not be able to presume funding for any services, unlike under the current system where they have a reasonable expectation of at least receiving Priority 1 services. This might lead to applicants balking at expending significant effort to apply for the program. Consequently, we must oppose this proposal because we believe that it must inevitably lead to a constriction of the availability of Priority 1 funds, thereby potentially destabilizing the program.

E. Revising Funding Priorities

The ALA suggests in its response to the Notice that the Commission revise the current priority and library discount rate assignment systems. For the current two-tiered priority system, ALA proposes to substitute a new three-tiered system: category 1 for approved transmission and connectivity services, category 2 for innovative and cost-effective services, and category 3 for internal connections. Category 1 would contain all pre-approved services and equipment, and the approval process for these services would be automatic. Category 2 would be reserved for conditionally eligible services and equipment or items not previously considered by the Commission. Category 3 would constitute internal connections. The categories would be funded in order of priority, with funding of Category 1 services receiving top priority. ALA asserts that this system would be significantly more streamlined because pre-approved Category 1 services would not have to await eligible services decisions. Moreover, ALA believes that its system would ensure that SLD approve discounts for only appropriate technology, thereby preventing funding for ineligible services and increasing the availability of internal connections funding. In conjunction with this revision of the funding priorities, ALA advocates changing the formula for determining the eligibility of libraries for E-Rate funds. Specifically, ALA proposes using census data as an alternative to the school lunch data, or permitting libraries to use the school lunch data from the closest elementary school rather than a district average.

In our initial comments, NEA, ISTE, and COSN expressed reservations about a pre-approved eligible services list because of our concern that SLD would be unable to review and decide upon new services in a timely fashion. ALA's three-tiered proposal seems to have that same drawback: applicants for Category 2 services would have to await decisions by SLD while applicants for Category 1 services would have already received funding. We fear that the implementation of such a system would bias applicants towards choosing only pre-approved services and stifle the development and adoption of new technologies.

We also have some concerns with ALA's proposal to revise the library eligible discount rate system. NEA, ISTE, and COSN understand that libraries often serve diverse socio-economic constituencies and that many libraries believe that they should receive discount rates that accurately reflect the economic situations of their patrons. However, we are concerned at the prospect of establishing a new system to determine eligible discount rates for libraries that affords them the option of "shopping" for higher eligible discount rates. For the time being, we reserve judgment on ALA's proposals. Instead, we recommend that SLD or the Commission conduct a study regarding the advantages and disadvantages of ALA's alternate qualification mechanism for libraries, and we suggest that the Commission hold a separate rulemaking on this issue.

II. E-RATE COVERAGE FOR ANCILLARY TELEPHONE SERVICES

Initially, NEA, ISTE, and COSN filed comments in support of expanding E-Rate coverage to voice mail. After reviewing the public comments submitted on this issue, NEA, ISTE and COSN wish to expand our earlier position and endorse a proposal to revise the E-Rate eligibility of other ancillary services such as E911 and directory assistance.

In the Notice, the Commission sought comment on whether reclassifying voice mail as an eligible service under the E-Rate program would improve the operation of the program, or otherwise further the goals of preventing fraud, waste and abuse, and promoting the fair and equitable distribution of E-Rate funds. In addition to supporting E-Rate funding for voice mail, numerous respondents to the Notice, including the Universal Service Administration Company (USAC), advocated for the expansion of E-Rate coverage to other ancillary telephone services such as E911 and directory assistance. According to USAC, an administrative savings can be realized by extending E-Rate coverage to voice mail only if other ancillary services are covered. (*See* comments of USAC, at p. 15). USAC estimates that expanding coverage in this way could save the program $150,000 - $200,000 per year. Also supporting that conclusion, a study commissioned by the SLD revealed that voice mail and other ancillary charges comprise only 3% of the total telephone invoices for applicants. (*See* Comments of the Arkansas E-rate Work Group, at p. 5). Therefore, we believe that the relief from the administrative burden of enforcing the restrictions far outweighs the additional costs incurred by funding these ancillary services. Based on this information, NEA, ISTE, and COSN support the expansion of E-Rate eligibility to ancillary telephone services such as E911 and directory assistance.

III. DIRECT PAYMENT OF BEAR REIMBURSEMENTS TO APPLICANTS

In response to the Notice's request for comments on a proposal to require providers to remit BEAR reimbursements to applicants within twenty (20) days of receipt of payment from the Administrator, many respondents to the Notice questioned whether BEAR reimbursements should be remitted directly to applicants, not service providers, thereby eliminating the need for a twenty-day rule. In particular, CCSSO, the state education agencies of Alabama, Alaska, California, Illinois, Iowa, Kentucky, and Pennsylvania, the San Francisco Public Library, AT&T Wireless, and the Michigan Information Network all supported a procedure for remitting reimbursements directly to applicants.

NEA, ISTE, and COSN conditionally support the premise of a process for remitting reimbursements directly to applicants; however, we oppose any such procedure that bypasses the involvement of the service providers. Currently, when applicants pay the full cost of services directly to service providers, service providers must submit a BEAR reimbursement form. After processing the form, the Administrator sends the reimbursement to the service provider, who must then remit payment to the applicant. The current process is cumbersome and time consuming, and undoubtedly leads to significant delays in the applicant's receipt of the reimbursement. Nevertheless, the role of the service provider in the BEAR process serves as a check on the abuse of the program by applicants. In particular, because the service provider must ultimately review and submit the reimbursement form, the likelihood that an applicant will submit a claim for services not received is reduced.

Consequently, NEA, ISTE, and COSN oppose proposals that seek to permit applicants to apply for reimbursements directly, and instead support proposals that would incorporate a new assignment block on the current BEAR form. In this manner, service providers would still be required to review and submit the application for reimbursement, but the SLD would remit payment to the assignee specified in the assignment block. In this manner, the BEAR process would retain the benefit of the check against fraud or abuse, while eliminating the unnecessary delays stemming from the current system of remitting payments to service providers.

IV. FORM 470 PROPOSALS

A substantial number of respondents to the Notice proposed to eliminate both the Form 470 and the entire competitive bidding process on the grounds that both are time consuming and that the competitive bidding process rarely results in the submission of multiple bids by service providers. NEA, ISTE, and COSN oppose such proposals because we do not believe that the Form 470 is particularly onerous and we contend that the competitive bidding process remains valuable. On the subject of the Form 470, we assert that any applicant prepared to file a Form 471 has all the information necessary to complete the Form 470. Additionally, the Form 470 is available online and we believe that this online form has significantly streamlined and expedited the application process. On the subject of the competitive bidding process, we believe that while it may be of less benefit to applicants in remote areas, it still generates numerous bids for many applicants and provides smaller competitors with the opportunity to bid on contracts.

Based on the public comments, however, it is apparent that many applicants do not understand the Form 470 process, and may be unaware of the streamlined nature of the online Form 470. Additionally, we understand that many schools and libraries in low income or rural areas may lack the personnel and the expertise to begin and complete the application process. Consequently, we suggest that the SLD renew its outreach and education efforts to improve applicants' understanding of the Form 470 and the competitive bidding process. We also suggest that SLD broaden its efforts to provide low-income and rural schools and libraries technical assistance and support in preparing their applications.

V. E-RATE SUPPORT FOR ADMINISTRATIVE TRAINING

A number of respondents to the Notice, including CCSSO, the Colorado Department of Education, MORENet, and the ALA, argue that the brunt of the education and outreach for the program has been placed upon state agencies and library systems. According to CCSSO, state agencies spend an average of $330,000 annually to implement the E-Rate program, and provide numerous services including: reviewing and approving of technology plans, preparing standardized formats for the National School Lunch Program, calculating discount percentages by school, providing ongoing guidance for applicants through the application process, and alerting the Administrator to problems experienced in the field with interpretations and on-line functionality. (CCSSO Comments, at pp. 64-65).

While ALA, MORENet, and Colorado advocate that SLD cover the expenses associated with traveling to the annual "Train-the-Trainers" conference in Washington, DC (at an estimated cost of $100,000 to $150,000), CCSSO calls for a more liberal plan to reimburse state agencies for administrative expenditures, including: off-setting the costs of reviewing and approving technology plans, creating a pool from which state agencies could draw funds for training sessions in their state, and offering an administrative stipend to each state for the services they provide to their schools and to the SLD in support of the program. (CCSSO, at pp. 64-65).

NEA, ISTE, and COSN oppose these proposals because they would undermine the integrity of the E-Rate program by diverting scarce resources away from their intended purposes. Additionally, such payments would establish a precedent for any institution to seek program funds to recoup E-Rate administrative costs. The E-Rate program was never designed to serve as a block grant to cover the administrative costs associated with state governments. While we recognize the budgetary concerns of the state agencies, we suggest that renewed outreach and education by the SLD, as proposed above in Section IV, could reduce some of the burden currently shouldered by state agencies.

CONCLUSION

NEA, ISTE, and COSN urge the Commission to consider the numerous proposals submitted by the public to improve the efficiency of the application process, determine the appropriate usage of the funds post-commitment, ease the appellate process, increase enforcement of the regulations, and clarify procedures for the allocation and distribution of unused funds.

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Respectfully submitted,

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